

# Senate File 520 - Introduced

SENATE FILE \_\_\_\_\_  
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 1081)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

## A BILL FOR

1 An Act creating a private cause of action for certain consumer  
2 fraud violations.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:  
4 TLSB 1105SV 82  
5 rh/gg/14

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1 1 Section 1. NEW SECTION. 714F.1 TITLE.  
1 2 This chapter shall be known and may be cited as the  
1 3 "Private Remedy for Consumer Fraud Act".  
1 4 Sec. 2. NEW SECTION. 714F.2 DEFINITIONS.  
1 5 1. "Advertisement" means the same as defined in section  
1 6 714.16.  
1 7 2. "Consumer" means a natural person or the person's legal  
1 8 representative.  
1 9 3. "Consumer merchandise" means merchandise offered for  
1 10 sale or lease, or sold or leased, primarily for personal,  
1 11 family, or household purposes.  
1 12 4. "Deception" means an act or practice that is likely to  
1 13 mislead a substantial number of consumers as to a material  
1 14 fact or facts.  
1 15 5. "Merchandise" means the same as defined in section  
1 16 714.16.  
1 17 6. "Person" means the same as defined in section 714.16.  
1 18 7. "Sale" means any sale or offer for sale of consumer  
1 19 merchandise for cash or credit.  
1 20 8. "Unfair practice" means the same as defined in section  
1 21 714.16.  
1 22 Sec. 3. NEW SECTION. 714F.3 PROHIBITED PRACTICES.  
1 23 1. A person shall not engage in an unfair practice,  
1 24 deception, fraud, false pretense, false promise, or  
1 25 misrepresentation, or the concealment, suppression, or  
1 26 omission of a material fact with the intent that others rely  
1 27 upon the concealment, suppression, or omission, in connection  
1 28 with the advertisement, retail sale, or lease of consumer  
1 29 merchandise, or the solicitation of contributions for  
1 30 charitable purposes.  
1 31 2. A person shall not engage in any practice that is in  
1 32 violation of any of the following:  
1 33 a. Section 321.69.  
1 34 b. Chapter 516D.  
1 35 c. Section 516E.5, 516E.9, or 516E.10.  
2 1 d. Chapter 555A.  
2 2 e. Section 714.16, subsection 2.  
2 3 f. Chapter 714A.  
2 4 Sec. 4. NEW SECTION. 714F.4 EXCLUSIONS.  
2 5 1. This chapter shall not apply to any of the following:  
2 6 a. Advertising by a retailer for a product, other than a  
2 7 drug or other product claiming to have a health-related  
2 8 benefit or use, if the advertising is prepared by a supplier,  
2 9 unless the retailer participated in the preparation of the  
2 10 advertisement or knew or should have known that the  
2 11 advertisement was deceptive, false, or misleading.  
2 12 b. The newspaper, magazine, publication, or other print  
2 13 media in which the advertisement appears, or the radio  
2 14 station, television station, or other electronic media which  
2 15 disseminates the advertisement if the newspaper, magazine,  
2 16 publication, radio station, television station, or other print  
2 17 or electronic media has no knowledge of the fraudulent intent,  
2 18 design, or purpose of the advertiser at the time the

2 19 advertisement is accepted. This paragraph shall not apply to  
2 20 any advertisement that complies with the statutes, rules, and  
2 21 regulations of the federal trade commission.

2 22 c. Conduct that constitutes puffery or other similar  
2 23 advertising, marketing, or sales techniques.

2 24 2. "Material fact" as used in this chapter does not  
2 25 include repairs of damage to or adjustments on or replacements  
2 26 of parts with new parts of otherwise new merchandise if the  
2 27 repairs, adjustments, or replacements are made to achieve  
2 28 compliance with factory specifications and are made before  
2 29 sale of the merchandise at retail and the actual cost of any  
2 30 labor and parts charged to or performed by a retailer for any  
2 31 such repairs, adjustments, and parts does not exceed five  
2 32 hundred dollars or ten percent of the actual cost to a  
2 33 retailer including freight of the merchandise, whichever is  
2 34 less, providing that the seller posts in a conspicuous place  
2 35 notice that repairs, adjustments, or replacements will be  
3 1 disclosed upon request. The exclusion provided in this  
3 2 subsection does not apply to the concealment, suppression, or  
3 3 omission of a material fact if the purchaser requests  
3 4 disclosure of any repair, adjustment, or replacement.

3 5 Sec. 5. NEW SECTION. 714F.5 PRIVATE CAUSE OF ACTION.

3 6 1. A consumer who suffers damage or injury as the result  
3 7 of a prohibited practice in violation of this chapter may  
3 8 bring an action at law to recover actual damages. An award of  
3 9 damages for such a prohibited practice shall not be made  
3 10 without proof that the person or persons seeking damages  
3 11 suffered an actual out-of-pocket loss. The court may order  
3 12 such equitable relief as it deems necessary to protect the  
3 13 public from further violations, including temporary and  
3 14 permanent injunctive relief.

3 15 2. If the court finds that a person has violated this  
3 16 chapter, the court shall award to the consumer the costs of  
3 17 the action and to the consumer's attorney reasonable fees.  
3 18 Reasonable attorney fees shall be determined by the value of  
3 19 the time reasonably expended by the attorney including but not  
3 20 limited to consideration of the following factors:

3 21 a. The time and labor required.

3 22 b. The novelty and difficulty of the issues in the case.

3 23 c. The skills required to perform the legal services

3 24 properly.

3 25 d. The preclusion of other employment by the attorney due  
3 26 to the attorney's acceptance of the case.

3 27 e. The customary fee.

3 28 f. Whether the fee is fixed or contingent.

3 29 g. The time limitations imposed by the client or the  
3 30 circumstances of the case.

3 31 h. The amount of money involved in the case and the  
3 32 results obtained.

3 33 i. The experience, reputation, and ability of the  
3 34 attorney.

3 35 j. The undesirability of the case.

4 1 k. The nature and length of the professional relationship  
4 2 between the attorney and the client.

4 3 l. Damage awards in similar cases.

4 4 3. In order to recover damages, a claim under this section  
4 5 shall be proved by a preponderance of the evidence.

4 6 4. If the finder of fact finds that a prohibited practice  
4 7 in violation of this chapter constitutes willful and wanton  
4 8 disregard for the rights or safety of another, in addition to  
4 9 an award of actual damages, statutory damages up to three  
4 10 times the amount of actual damages may be awarded to a  
4 11 prevailing consumer.

4 12 5. This section shall not affect a consumer's right to  
4 13 seek relief under any other theory of law.

4 14 Sec. 6. NEW SECTION. 714F.6 ATTORNEY GENERAL  
4 15 NOTIFICATION.

4 16 1. A party filing a petition, counterclaim,  
4 17 cross-petition, or pleading in intervention alleging a  
4 18 violation under this chapter, within seven days following the  
4 19 date of filing such pleading, shall provide a copy to the  
4 20 attorney general and, within seven days following entry of any  
4 21 final judgment in the action, shall provide a copy of the  
4 22 judgment to the attorney general.

4 23 2. A party appealing to district court a small claims  
4 24 order or judgment involving an issue raised under this  
4 25 chapter, within seven days of giving oral or written notice of  
4 26 the appeal, shall notify the attorney general in writing and  
4 27 provide a copy of the pleading raising the issue and a copy of  
4 28 the small claims court order or judgment.

4 29 3. Except for appeals of small claims court orders or

4 30 judgments described in subsection 2, a party appealing an  
4 31 order or judgment involving an issue raised under this  
4 32 chapter, within seven days following the date such notice of  
4 33 appeal is filed with the court, shall notify the attorney  
4 34 general in writing and provide a copy of the pleading raising  
4 35 the issue and a copy of the court order or judgment being  
5 1 appealed.

5 2 4. Upon timely application to the court in which an action  
5 3 involving an issue raised under this chapter is pending, the  
5 4 attorney general may intervene as a party at any time or may  
5 5 be heard at any time. The attorney general's failure to  
5 6 intervene shall not preclude the attorney general from  
5 7 bringing a separate enforcement action.

5 8 5. All copies of pleadings, orders, judgments, and notices  
5 9 required by this section to be sent to the attorney general  
5 10 shall be sent by certified mail unless the attorney general  
5 11 has previously been provided such copies of pleadings, orders,  
5 12 judgments, or notices in the same action by certified mail, in  
5 13 which case subsequent mailings may be made by regular mail.  
5 14 Failure to provide the required mailings to the attorney  
5 15 general shall not be grounds for dismissal of an action under  
5 16 this chapter, but shall be grounds for a subsequent action by  
5 17 the attorney general to vacate or modify the judgment.

5 18 Sec. 7. NEW SECTION. 714F.7 CLASS ACTIONS.

5 19 In addition to the criteria considered by a court in  
5 20 determining whether a class action alleging a violation of  
5 21 this chapter should be permitted for the fair and efficient  
5 22 adjudication of the controversy pursuant to the rules of civil  
5 23 procedure, the court shall determine whether permitting the  
5 24 class action is consistent with the interests of justice and  
5 25 whether all criteria considered have been established by a  
5 26 preponderance of the evidence.

#### 5 27 EXPLANATION

5 28 This bill creates a private remedy for certain consumer  
5 29 fraud Act violations.

5 30 The bill creates a private cause of action for consumer  
5 31 fraud violations. The bill provides that a consumer who  
5 32 suffers damage or injury as a result of a prohibited practice  
5 33 declared to violate the bill may bring an action at law to  
5 34 recover actual damages, and may seek court protection from  
5 35 further violations, including temporary and permanent  
6 1 injunctive relief. In addition, a prevailing consumer in such  
6 2 an action may be awarded costs and reasonable attorney fees to  
6 3 be determined by the value of time reasonably expended by the  
6 4 attorney including but not limited to certain factors as  
6 5 specified in the bill. In addition, if the finder of fact  
6 6 finds that a prohibited practice in violation of the bill  
6 7 constitutes willful and wanton disregard for the rights or  
6 8 safety of another, in addition to an award of actual damages,  
6 9 statutory damages up to three times the amount of actual  
6 10 damages may be awarded to a prevailing consumer.

6 11 The bill defines a prohibited practice to include an unfair  
6 12 practice, deception, fraud, false pretense, false promise, or  
6 13 misrepresentation, or the concealment, suppression, or  
6 14 omission of a material fact with the intent that others rely  
6 15 on the concealment, suppression, or omission, in connection  
6 16 with the advertisement, sale, or lease of consumer  
6 17 merchandise, or the solicitation of contributions for  
6 18 charitable purposes.

6 19 The bill does not apply to certain advertising by a  
6 20 retailer for a product unless the retailer participated in the  
6 21 preparation of the advertisement or knew or should have known  
6 22 that the advertisement was deceptive or misleading, print  
6 23 media in which the advertisement appears or electronic media  
6 24 which disseminates the advertisement if the print or  
6 25 electronic media has no knowledge of the fraudulent intent,  
6 26 design, or purpose of the advertiser at the time the  
6 27 advertisement is accepted, and conduct that constitutes  
6 28 puffery or other similar advertising, marketing, or sales  
6 29 techniques.

6 30 The bill authorizes the attorney general to oversee private  
6 31 consumer fraud actions, including small claims court actions,  
6 32 by requiring a party filing a petition, counterclaim,  
6 33 cross-petition, or pleading in intervention alleging a  
6 34 violation under the bill to provide a copy of the relevant  
6 35 documents, including judgments and notices of appeal, to the  
7 1 attorney general. In addition, the attorney general may  
7 2 intervene as a party in a private consumer fraud action at any  
7 3 time, or may be heard in such an action at any time.

7 4 The bill provides that failure to provide all mailings of  
7 5 petitions, orders, judgments, and notices of appeal to the

7 6 attorney general shall not be grounds for dismissal, but shall  
7 7 be grounds for a subsequent action by the attorney general to  
7 8 vacate or modify the judgment.  
7 9 The bill provides that in addition to the criteria  
7 10 considered by a court in determining whether a class action  
7 11 alleging a violation of the bill should be allowed, the court  
7 12 shall determine whether permitting the class action is  
7 13 consistent with the interests of justice and whether all  
7 14 criteria considered have been established by a preponderance  
7 15 of the evidence.  
7 16 LSB 1105SV 82  
7 17 rh:rj/gg/14